

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:19-cv-00112-BO

KENNETH WASHINGTON,)	
)	
Plaintiff,)	
v.)	UNITED STATES' MOTION TO DISMISS
)	FOR LACK OF SUBJECT MATTER
DEPARTMENT OF THE NAVY,)	JURISDICTION; 12(b)(1).
)	
Defendant.)	
)	
)	
)	
)	

The Government moves to dismiss Plaintiff's Amended Complaint, brought under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680, for three reasons. First, Plaintiff brings a wrongful death cause of action in his individual capacity and not as the personal representative or collector of the decedents, a requirement under the North Carolina Wrongful Death Act, N.C. Gen. Stat. § 28A-18-2. Second, Plaintiff fails to name a proper defendant under the FTCA, 28 U.S.C § 2679(a). Third, Plaintiff fails to allege a cause of action that is not jurisdictionally barred by the FTCA's discretionary function exception. 28 U.S.C. § 2680(a).

In support of its motion, the Government submits the accompanying Memorandum of Law.

DATED this 10th day of September, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2019, a copy of the foregoing document was served on all counsel of record by operation of the Court's electronic filing system and can be accessed through that system.

/s/ Danielle L. Sgro
DANIELLE L. SGRO